

SF FILE NUMBER

3.13

## ADMINISTRATIVE RECORD

0010433

## RECORD OF COMMUNICATION

with

Bernie Noonan, Burlington Northern RR

September 6, 1984

This morning I called Bernie Noonan of BN to ask him some questions re: the August 21, 1984 letter. I asked him why the letter was on ERT letterhead rather than BN. He said normally ERT sends a draft to him which he transposes with some changes onto BN letterhead. This time he didn't have the time to do this due to his schedule and rather than delay the letter, he sent it on as it was. I asked Bernie what the extent of ERT's authority was to speak for BN. His response indicated to me that ERT doesn't have any authority to speak for BN, that this particular letter was a one-time occurrence. Bernie said he would send the letter out again, this time on BN letterhead.

I asked Bernie whether the procedure described in the August 21 letter was a test or a description of the actual recovery method. He stated that it was a test, but that if it was successful, BN would like to use the same method to treat the whole swamp.

I asked why the letter contained no mention of the sheetpile or riprap barrier discussed at the August 17 meeting. He responded that ERT said it would not be possible to install the barrier until the lake level recedes. He added, though, that he was going to raise the issue again.

I said that the kind of action described in the August 21 letter would require a CERCLA 106 Order in order for EPA to sanction the action. He stated that BN performed some similar action at a CERCLA site on the west coast, and the Seattle EPA Office did not require it to be done under a 106 order. I said I would check on that.

I said that it would probably not be possible for us to respond to the August 21 letter before BN begins the test at Somers. (Bernie said they would probably start early during the week of September 10.) I told Bernie if BN does start action without a 106 order, that it is done at BN's own risk, that the possibilities are that EPA could at a later date perform work itself and pursue cost recovery from BN, or that BN could be liable for any environmental damages as a result of their action.

Bernie stated that the onset of cold weather might preclude BN from doing any pumping at the swamp until next summer, and that he therefore wanted to start as soon as possible. I agreed that it probably would be best to start soon, but that whatever BN did would be at their own risk.

